

Court Rules Spy Suspects Can See Files on Bugging

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WASHINGTON, March 10—The Supreme Court placed heavy penalties on illegal governmental eavesdropping today by ruling that espionage and racketeering defendants can search through the Government's surveillance transcripts to see if their rights were violated.

The ruling is expected to discourage the Government from prosecuting some spy suspects. Solicitor General Erwin N. Griswold had argued before the Court that the Government might have to drop some espionage prosecutions because it could not afford to let foreign powers know how much United States counterspy units had learned through eavesdropping.

However, the Court said in an opinion by Justice Byron R. White that no distinction should be made between defendants in ordinary criminal cases and those in spy trials when the Government was accused of illegal surveillance.

Complicated Issues

In the 5-to-3 ruling, the Court dealt with the complicated problems raised by Federal agents who used wiretapping and bugging in investigations before Congress passed the 1968 law that made court-approved surveillance legal. The Justice Department had disclosed a number of instances in which United States agents have eavesdropped on accused or convicted persons.

Because material from illegal eavesdropping is not admitted in evidence against the person whose rights were violated, the

Continued on Page 18, Column 1

Continued From Page 1, Col. 5

Court has been called upon to say when a person's rights have been violated by eavesdropping, and how he can be certain that no tainted evidence was used against him at his trial.

On the first question, the Court adhered today to its traditional position that a person has "standing" to demand that any evidence be excluded from his trial if it was obtained by eavesdropping on his private premises or by surveillance of his conversations.

It held that persons who were not overheard or whose premises were not compromised could not object to the use of evidence against them gained by eavesdropping.

On the second question, the

Court rejected the Justice Department's argument that defendants' rights would be adequately protected if trial judges read the transcripts of the "bugged" conversations and disclosed to the defense any that seemed arguably relevant to the trial.

Sensitive Cases

Instead, Justice White said that if the hearings to determine whether the defendants' rights were violated "are to be more than a formality and petitioners not left entirely to reliance on Government testimony," the defendant and his lawyer must be allowed to read the eavesdropping transcripts and see for themselves whether the Government used tainted information to make its case.

This could embarrass the Government in a number of

sensitive cases. The Justice Department has disclosed in its Selective Service case against Cassius Clay, former heavyweight boxing champion, and in the conspiracy case involving Dr. Benjamin M. Spock and four other opponents of the Vietnam war draft that the defendants were overheard by eavesdropping devices that were being used in surveillance of other persons.

The Government gave its assurance that these conversations did not taint these trials, but today's ruling gives the defendants the right to demand to see the transcripts of their conversations. This will disclose whom the Government was overhearing—disclosures that could cause the Government acute discomfort.

The dissenters on the ruling

were Justices Hugo L. Black, John M. Harlan and Abe Fortas. Justice Thurgood Marshall, who helped frame the Justice Department's bugging disclosure policy when he was solicitor general, did not take part.

The decision was given in two cases. One involved the extortion conviction of Willie I. Alderman of Las Vegas and Felix Alderisio of Chicago, who were found guilty of threatening the life of a Denver lawyer to collect a debt.

The second concerned the conviction of John W. Butenko, an American engineer, and Igor Ivanov, a Russian chauffeur, for conspiring to spy for the Soviet Union.

Edward Bennett Williams of Washington argued for Alderman, Alderisio and Ivanov. Charles Danzig of Newark argued for Butenko.